

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 21st day of December, two thousand nine.

PRESENT:

JOSEPH M. McLAUGHLIN,
JOSÉ A. CABRANES,
RICHARD C. WESLEY,
Circuit Judges.

MEI LIN, YI XIAO HUANG,
Petitioners,

v.

08-3428-ag
NAC

ERIC H. HOLDER, JR.,¹ UNITED STATES
ATTORNEY GENERAL,
Respondent.

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Eric H. Holder, Jr., is automatically substituted for former Attorney General Michael B. Mukasey as respondent in this case.

1 **FOR PETITIONERS:** **Richard Tarzia, Belle Mead, New**
2 **Jersey.**

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4 **FOR RESPONDENT:** **Michael F. Hertz, Deputy Assistant**
5 **Attorney General, Civil Division,**
6 **Ernesto H. Molina, Jr., Assistant**
7 **Director, Drew C. Brinkman, Trial**
8 **Attorney, Office of Immigration**
9 **Litigation, U.S. Department of**
10 **Justice, Washington, D.C.**
11

12 UPON DUE CONSIDERATION of this petition for review of a
13 decision of the Board of Immigration Appeals ("BIA"), it is
14 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
15 review is DENIED in part and DISMISSED in part.

16 Mei Lin and Yi Xiao Huang, both natives and citizens of
17 China, seek review of the June 16, 2008 order of the BIA:
18 (1) vacating the May 30, 2006 decision of Immigration Judge
19 ("IJ") Noel A. Brennan granting Lin's application for
20 asylum; (2) pretermittting Lin's application for asylum and
21 denying her application for withholding of removal and
22 relief under the Convention Against Torture ("CAT"); and (3)
23 denying Lin's motion to remand.² *In re Mei Lin and Yi Xiao*
24 *Huang*, Nos. A099 429 066/067 (B.I.A. June 16, 2008), *aff'g*

² Mei Lin's asylum application included her husband, Yi Xiao Huang, as a derivative applicant. The BIA's decision discussed only Lin's eligibility for asylum and related relief. Therefore, for the sake of clarity, this order refers only to Lin throughout.

1 Nos. A099 429 066/067 (Immig. Ct. N.Y. City May 30, 2006).

2 We assume the parties' familiarity with the underlying facts
3 and procedural history of the case.

4 As an initial matter, we lack jurisdiction to review
5 the BIA's decision insofar as it pretermitted as untimely
6 Lin's application for asylum. See 8 U.S.C. § 1158(a)(3).
7 While we retain jurisdiction to review constitutional claims
8 and "questions of law," 8 U.S.C. § 1252(a)(2)(D), Lin has
9 made no such argument. Rather, Lin challenges the BIA's
10 discretionary determination that she did not show changed
11 circumstances sufficient to excuse the untimeliness of her
12 asylum application, which is precisely the type of argument
13 that we lack jurisdiction to review. *Xiao Ji Chen v. U.S.*
14 *Dep't of Justice*, 471 F.3d 315, 329 (2d Cir. 2006). We
15 dismiss the petition for review to that extent, and proceed
16 to review Lin's challenge to the BIA's denial of her
17 application for withholding of removal and CAT relief.

18 Because the BIA vacated the IJ's decision, we review
19 only the decision of the BIA. See *Yan Chen v. Gonzales*, 417
20 F.3d 268, 271 (2d Cir. 2005). The applicable standards of
21 review are well-established. See, e.g., *Yanqin Weng v.*
22 *Holder*, 562 F.3d 510, 513 (2d Cir. 2009).

1 The BIA did not err in denying Lin's application for
2 withholding of removal and CAT relief. *See Jian Hui Shao v.*
3 *Mukasey*, 546 F.3d 138 (2d Cir. 2008). Contrary to Lin's
4 arguments that the BIA failed to consider the "extensive"
5 country conditions evidence that she presented, we have
6 rejected the notion that the agency must "expressly parse or
7 refute on the record each individual argument or piece of
8 evidence offered by the petitioner." *Id.* at 169; *Xiao Ji*
9 *Chen*, 471 F.3d at 337 n.17. ("presum[ing] that [the agency]
10 has taken into account all of the evidence before [it],
11 unless the record compellingly suggests otherwise").
12 Moreover, we have previously reviewed the BIA's
13 consideration of evidence similar to that which Lin
14 submitted and found no error in its conclusion that such
15 evidence is insufficient to establish an objectively
16 reasonable fear of persecution. *See Jian Hui Shao*, 546 F.3d
17 at 156-65.

18 Finally, the BIA did not abuse its discretion in
19 denying Lin's motion to remand. *See Li Yong Cao v. Dep't of*
20 *Justice*, 421 F.3d 149, 151 (2d Cir. 2005). As the BIA
21 found, the "bulk" of her evidence was not previously
22 unavailable. *See* 8 C.F.R. § 1003.2(c)(1). With respect to

1 the remaining evidence, the BIA acted well within its
2 discretion in finding that the record was sufficiently
3 complete such that remand was not warranted.

4 For the foregoing reasons, the petition for review is
5 DENIED in part and DISMISSED in part. As we have completed
6 our review, any stay of removal that the Court previously
7 granted in this petition is VACATED, and any pending motion
8 for a stay of removal in this petition is DISMISSED as moot.
9 Any pending request for oral argument in this petition is
10 DENIED in accordance with Federal Rule of Appellate
11 Procedure 34(a)(2), and Second Circuit Local Rule 34(b).

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14 FOR THE COURT:
15 Catherine O'Hagan Wolfe, Clerk
16

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18 By: _____